

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel. W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA and
OKLAHOMA SECRETARY OF THE
ENVIRONMENT C. MILES TOLBERT, in his
capacity as the TRUSTEE FOR THE NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

v.

TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
CAL-MAINE FOODS, INC., CAL-MAINE FARMS,
INC., CARGILL, INC., CARGILL TURKEY
PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S
FARMS, INC., PETERSON FARMS, INC.,
SIMMONS FOODS, INC. and WILLOW BROOK
FOODS, INC.

Defendants.

Case No. 05-CV-00329
GKF-SAJ

**MOTION OF TEXAS FARM BUREAU, TEXAS CATTLE FEEDERS
ASSOCIATION, TEXAS PORK PRODUCERS ASSOCIATION AND
TEXAS ASSOCIATION OF DAIRYMEN TO FILE BRIEF AS AMICUS CURIAE
AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE COURT:

Texas Farm Bureau, Texas Cattle Feeders Association, Texas Pork Producers Association, and Texas Association of Dairymen (collectively, "Amici Curiae") seek leave of this Court to file a brief directed to certain unique issues raised by Plaintiff's Motion for Preliminary Injunction. The Amici Curiae seek to address these issues independent of any briefs

or opposition to be submitted by parties to the case. In support of the Motion for Leave, the Amici Curiae show as follows:

INTERESTS OF THE AMICI CURIAE

The Amici Curiae collectively represent individuals and companies involved in animal and crop agriculture in the State of Texas.

The Texas Farm Bureau was founded in 1933 as a fledgling organization of farmers and has now grown to be one of the largest groups of farmers, ranchers and rural families in Texas. Texas Farm Bureau is committed to providing a voice for farmers, ranchers, rural citizens and all persons interested in preserving and protecting this way of life. Texas Farm Bureau speaks for more than 405,000 member families.

The Texas Cattle Feeders Association is a non-profit organization serving the interests of individuals and companies that feed cattle in Texas, Oklahoma, and New Mexico. The organization has over 6,000 individual members and 200 feedyard members, which annually market more than 6 million head of cattle, comprising approximately 30% of the nation's beef supply.

The Texas Pork Producers Association, Inc. is a statewide non-profit organization serving the interest of individuals and companies that grow hogs. The organization has over 350 members in the state with farm sizes ranging from one sow to over 20,000 sows. The organization was founded in 1889 as the Texas Swine Breeders Association and adopted its current name in 1968 to better reflect its mix of membership.

The Texas Association of Dairymen is a non-profit organization founded in 1991 for the purpose of representing the interests of dairy families across Texas, regardless of their

cooperative affiliation. Members of the Association operate dairies throughout Texas. The Association focuses specifically on issues significant to dairies, including environmental regulation, operational practices and legislative issues.

Many of the producers represented by these entities do a substantial business with the State of Oklahoma. These entities are routinely involved in legislative and regulatory rulemakings that govern their membership, including waste management practices. The Amici believe that Plaintiff's Motion for Injunction represents a perilous departure from the multifaceted approach to environmental regulation of agriculture currently provided by legislatures and administrative agencies. This departure, which Texas has experienced in the past carries very significant economic consequences and threatens the existing regulatory environment for agriculture as well as other industries. The ruling sought by the State of Oklahoma could bind hundreds of thousands of individual agricultural operations, most of whom do not grow poultry, are not located in the Illinois River Watershed and do not operate in Oklahoma.

The Amici Curiae seek leave to file a short amicus curiae brief, attached hereto as Exhibit A. This brief would benefit the Court with a unique perspective on important issues not being addressed by the parties on the merits.

1. Texas Farm Bureau, Texas Cattle Feeders Association, Texas Pork Producers and Texas Association of Dairymen speak for producers of crops, livestock and all types of agribusiness in the Texas economy, which represents more than \$100 Billion annually.
2. Texas has an established method of regulating, where necessary the collection, handling and application of manure through the Texas Legislature and the Texas Commission on Environmental Quality ("TCEQ"). Many agriculture businesses in Texas have invested considerable resources to comply with these requirements.
3. The Amici Curiae have recognized a pattern by some advocates of greater regulation of animal agriculture to circumvent legislatures and administrative agencies in favor of regulation through litigation.

4. Texas recently experienced this attempt at rulemaking by lawsuit in a case filed in federal court in Waco, Texas on theories nearly identical to the case currently pending before the Court.
5. The pattern in favor of litigation as well as the consequences of this approach are significant and represent issues that are material to the Court's consideration of the Oklahoma Attorney General's Motion for Preliminary Injunction.
6. Among other detrimental aspects of the litigation approach to regulation is the uncertainty placed upon producers as to their legal liability even if they comply with state law and all applicable requirements on manure handling and disposal.
7. To allow the perspective of Texas agricultural producers to be considered as a part of the Court's determination of the Motion for Preliminary Injunction, the Amici Curiae respectfully request that the Court grant leave to file the Amicus Brief attached hereto as Exhibit A.
8. The Amici Curiae believe that the issues addressed in their brief to the Court will be of substantial assistance to the Court and will add a viewpoint not currently represented by any party to this matter. *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997).

Respectfully submitted,

s/M. Richard Mullins

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

| | | |
|------------------------|--------------------|---------------------------|
| Jo Nan Allen | Justin Allen | Frederick C. Baker |
| Tim K. Baker | Sherry P. Bartley | Woody Bassett |
| Michael Bond | Douglas L. Boyd | Vicki Bronson |
| Paula M. Duchwald | Louis W. Bullock | Leanne Turner Burnett |
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| Bruce Jones | Jay T. Jorgensen | Krisann C. Kleibacker Lee |
| Derek Lawrance | Raymond T. Lay | Daniel Lennington |
| Nicole M. Longwell | Tina Lynn Izadi | Dara D. Mann |

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| Craig A. Mirles | Charles Livingston Moulton | Robert A. Nance |
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| Randall E. Rose | Michael G. Rousseau | Patrick Michael Ryan |
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| Erin Walker Thompson | Elizabeth C. Ward | Sharon K. Weaver |
| Timothy K. Webster | Terry W. West | Dale Kenyon Williams, Jr. |
| E. Stephen Williams | Douglas Allen Wilson | P. Joshua Wisley |
| J. Ron Wright | Lawrence W. Zeringue | |

And I hereby certify that a true and correct copy of the above and foregoing has been mailed via U.S. Mail, postage prepaid and addressed properly, on the following who are not registered participants of the ECF System:

| | |
|--|---|
| C. Miles Tolbert Secretary of the Environment State of Oklahoma 3800 North Classen Oklahoma City, OK 73118 Plaintiff | Gary V. Weeks Bassett Law Firm P.O. Box 3618 Fayetteville, AR 72702 Attorneys for Defendant George's, Inc. and George's Farms, Inc. |
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| James R. Lamb D. Jean Lamb Strayhorn Landing Rt. 1, Box 253 Gore, OK 74435 Pro Se, Third Party Defendants | Robin Wofford Route 2, Box 370 Watts, OK 74964 Pro Se, Third Party Defendant |
| Kenneth and Jane Spencer James C. Geiger Individually and d/b/a Spencer Ridge Resort Route 1, Box 222 Kansas, OK 74347 Pro Se, Third Party Defendants | Gordon and Susann Clinton 23605 South Goodnight Lane Welling, OK 74471 Third Party Defendants |
| G. Craig Heffington 20144 West Sixshooter Road Cookson, OK 74427 Pro Se, Six Shooter Resort and Marina, Inc., Third-Party Defendant | Ancil Maggard c/o Leila Kelly 2615 Stagecoach Drive Fayetteville, AR 72703 Third Party Defendant |
| Linda C. Martin N. Lance Bryan Doerner, Saunders 320 South Boston Avenue, Suite 500 Tulsa, OK 74103 Third Party Defendants | Richard E. Parker Donna S. Parker Burnt Cabin Marina & Resort, LLC 34996 South 502 Road Park Hill, OK 74451 Pro Se, Third Party Defendants |
| John and Virginia Adair Adair Family Trust Route 2, Box 1160 Stilwell, OK 74960 Third Party Defendants | Jim R. Bagby Route 2, Box 1711 Westville, OK 74965 Pro Se, Third Party Defendant |
| Marjorie A. Garman 5116 Highway 10 Tahlequah, OK 74464 Third Party Defendant | Doris Mares d/b/a Cookson Country Store and Cabins P. O. Box 46 Cookson, OK 74424 Pro Se, Third Party Defendant |
| Eugene Dill P. O. Box 46 Cookson, OK 74424 Pro Se, Third Party Defendant | James D. Morrison Rural Route #1, Box 278 Colcord, OK 74338 Pro Se, Third Party Defendant |

s/M. Richard Mullins